

THE ODELL ICE POND.

What the Grand Jury present in the
Bill of Indictment.

AFFIDAVITS OF DISTINGUISHED PHYSICIANS AND EXPERTS, SHOWING THAT THE WILLSEA BROOK IS IN FACT AN OPEN "SEWER," AND THAT *SEPTIC AND MALARIAL POISON* IS NECESSARILY DEVELOPED BY THE OVERFLOWING OF THE ADJACENT MEADOWLAND,



New York:

J. W. PRATT, BOOK AND JOB PRINTER, 75 FULTON STREET.

1879.



THE ODELL ICE POND.

The Grand Jury of the County of Westchester, (and it is rumored by a unanimous vote), have indicted Moses T. Odell, Henry Draper and Mrs. Fanny A. P. Haven for making, maintaining and continuing the dam and pond known as the Odell Ice-pond, and already so notorious as the cause of the malaria and zymotic diseases which have prevailed in the vicinity since the making of the same.

Dr. Draper and Mrs. Haven are the general guardians and representatives of the estates of the infant owners of the lands, now leased to Moses T. Odell, on which Odell, in the Fall of 1876, erected and now maintains, with their approval, and sufferance, the dam and pond in question.

In the bill of indictment the Jurors on their oath present, among other things, "That the pond and the lands flooded, especially when the water therein and thereon has been or may be withdrawn, lowered or evaporated, have produced and will again produce noxious, offensive and deleterious effluvia, miasma and malaria exhalations and smells, tainting, poisoning and corrupting the atmosphere so that the adjacent lands and dwellings have become unfit and unsafe for habitation, and so that those living in the vicinity have become and may again become sick, uncomfortable or otherwise injuriously affected with malaria, chills and fever and malarial diseases, etc., etc."

The following affidavits explain themselves. The salient points are: that the Willsea Brook, whose waters compose the pond, is, in fact, an open *Sewer*; that even were the water of the pond pure, *malarial poison* would, owing to

the character of the pond, be necessarily developed, as along the banks of the Mississippi, where, by *similar overflows*, whole districts are rendered so infectious as to be *uninhabitable* in the early summer; that no degree of cold known to this climate will destroy the germs of malarial poison; as the seeds sown in the Fall are not destroyed by the severe cold of mid-winter, so, too, these germs of death simply lie inert until the warmer weather of Spring and Summer; ice is well known to have transmitted the germs of typho-malarial and typhoid fever; that the ice from portions of the pond, and the water resulting from its melting is impure, and contains decomposed or decomposing matter, so as to be, when melting or melted, unpleasant to the smell; and that the meadows flooded by this pond will, *necessarily*, produce *septic* and *malarial poison*.

NEW YORK SUPREME COURT.

COUNTY OF WESTCHESTER.

FREDERICK J. STONE,

vs.

MOSES T. ODELL, *et al.*



City and County of New York, ss:

Frederick J. Stone, Plaintiff and Attorney in person, herein deposes and says:

That the Willsea Brook, whose waters compose the dam or pond described in the complaint herein, receives the drainage from an extensive hog-pen, in which there is going on the wholesale fattening of hogs, the washing from those pens, from piles of decomposing filth stacked up around

them and from enclosures where hogs are running and fed; the washings and drainage of a slaughterhouse where, until recently large numbers of beef cattle were slaughtered, and where hogs are now slaughtered; the drainage of a large swamp near its source on the lands of the defendants, Palmer, the washings of a road, the drainage of a hog-pen and of a barnyard, and of a stable where large numbers of cattle are kept, and that from a farm-house and privy—all these combine to pollute and defile the limited amount of water which this stream (to wit, the Willsea Brook) contains and render it in fact an open sewer; and all this accumulated filth and the wood brush, leaves and vegetable and animal matter, and the surface drainage and other filth collected and brought down the channel of said brook by the natural flowing of its waters become, and is collected and accumulated in the channel of said Brook and upon the lands overflowed by the said dam and described in the complaint. Deponent further says that he was a few days ago, in the presence of Anne K. Holmes, informed by John Loan who is the owner of the aforesaid slaughter-house and some of the said hog-pens, and verily believes that he, the said John Loan, intends before long to recommence slaughtering beef cattle, and on a more extensive scale than formerly, and that the said John Loan admitted to deponent that the said slaughtering establishment and the said hog-pens were a nuisance, and indictable, and that when the slaughtering was, or might be, commenced on said extensive scale, the same would be of a still greater nuisance; and that the drainage thereof now passed into the Willsea Brook, and that the rain swept and sweeps all the surface drainage into said brook. Deponent further says that he has examined some of the ice obtained from the pond set forth in the complaint, and that ice obtained from portions of said pond while melting, and the water resulting therefrom, in deponent's judgment, emitted unpleasant odors, like swamp gas or sewer gas or kitchen waste.

Deponent further says that the said Willsea Brook is very small, and occasionally, in the dry summer season, almost if not wholly dried up, and the volume of the flow of the said Brook at or near said dam would not in deponent's judgment be sufficient to fill a six-inch pipe, except in time of rain or freshet.

FREDERICK J. STONE.

Sworn to before me this 8th }
day of February, 1879. }

RT. A. ADAMS,

Notary Public, City and County of N. Y.

NEW YORK SUPREME COURT,

COUNTY OF WESTCHESTER.

FREDERICK J. STONE

v.s

MOSES T. ODELL, *et al.*



County of Westchester, ss:

James Wilde, Jr., being duly sworn, deposes and says:

That he has for upwards of 21 years resided and now resides in the town of Greenburgh, in said County of Westchester.

That deponent is conversant with, and has personally examined the lands and dwelling of the plaintiff, and the dam or pond mentioned in the complaint herein, and has known the lands whereon the said dam or pond is now situated for the last 21 years.

That the said lands, now flooded by the said dam or pond, were many years ago drained by S. D. Dakin, the

then owner by a proper system of open ditches and tile drain pipes running into them, which said ditches and drains rendered the said lands dry, and, as deponent verily believes, in a good healthy sanitary condition.

That by reason of the making of the said dam or pond, and the maintenance or continuance of the same, the adjacent lands to the extent of several acres are flooded periodically with a shallow depth of impure water polluted by slaughter-house refuse and the animal filth and excretions of large numbers of hogs, thereby choking and obstructing the natural course and channel of the Willsea Brook, and interfering with its action as a drain, and increasing and aggravating the natural marshy and swampy character of the ground.

That the said dam or pond of water periodically flooding the adjacent lands, is in the judgment of deponent an active and virulent source and cause of malarious diseases and of a special nuisance to the lands and premises of the plaintiff, and injurious to the health of the plaintiff and his family.

JAMES WILDE, JR.

Sworn to before me this 29th }
day of January 1879. }

CHARLES G. STORMS,
Justice of the Peace.

NEW YORK SUPREME COURT.

COUNTY OF WESTCHESTER.

FREDERICK J. STONE

vs.

MOSES T. ODELL, *et al.**County of Westchester, State of New York, ss:*

George Jackson Fisher, being duly sworn, deposes and says: that he resides in the village of Sing Sing, County of Westchester, and State of New York; that he is a physician and surgeon, and has practiced medicine and surgery under the laws of the State of New York for the last thirty (30) years, and in the said village of Sing Sing for the last twenty-seven (27) years and over; that he is acquainted with the lands and dwelling of the plaintiff, and the dam or pond of water mentioned and described in the complaint, and has personally examined the same; that he has read the affidavits of Geo. E. Waring Jr., of Ward Carpenter, of Horace Caruthers, M. D., of C. Prince, M. D., of J. Foster Jenkins, M. D., and others, and believes the contents thereof to be true and concurs therein; and that the substantial and general details of the same are true to his own personal knowledge. Deponent further saith that the said dam and pond of water, and the marsh and swamp, thereby formed and aggravated, is a special nuisance and detriment to the said lands and dwelling of the plaintiff, and renders the occupancy of the said dwelling hazardous to the health of its occupants.

That deponent followed the Willsea Brook as far up as the slaughter-houses, and hog-pens, and bone-yards referred to in some of the above affidavits; that he found large amounts of highly offensive and putrid manure, the drainage of all of which flowed into the ponds and stream lead-

ing to the pond described in the complaint, whereby and wherewith the waters of said pond are polluted and rendered unhealthy, the organic matters being deposited in the grassy and spongy bed of said pond, would in the opinion of deponent, on the draining off of the water of the pond in the Spring give rise to poisonous exhalations, dangerous to the health of persons residing in its vicinity; that deponent has carefully inspected the dwelling of Mr. Frederick J. Stone and its surroundings, and found them in perfect sanitary condition, and that he cannot account for the ill health of the inmates in any other manner except the miasma from the pond and brook referred to, and that he believes that they stand in the relation of cause and effect.

GEORGE J. FISHER.

Sworn to before me this 7th }
day of February, 1879. }

G. C. INSLER,

Justice of the Peace.

NEW YORK SUPREME COURT,

COUNTY OF WESTCHESTER.

FREDERICK J. STONE,

vs.

MOSES T. ODELL, *et al.*

City and County of New York, ss:

Alfred L. Loomis, being duly sworn, says: that he re-

sides in the City of New York; that he is a physician, and has practiced medicine in the City of New York for twenty-three years; that he is a Professor of the practice of Medicine and Pathology in the University of the City of New York; that he is consulting physician to the Charity Hospital, and has been visiting physician to Bellevue Hospital for nineteen years; that he has written and published a work on "Fevers," and papers on the origin and effect of malarial poison. Deponent further says that he is acquainted with the lands and dwelling of the plaintiff, and the dam and pond mentioned and described in the complaint aforesaid, and affidavits herein, having personally examined these premises, including the stream called the Willsea Brook, from its source to the lands that have been overflowed with the waters derived from it, by intercepting their flow in the meadows south-west of the premises of the plaintiff in this action, by the said dam. That deponent finds, as the result of this examination, that this Brook, near its source, receives the drainage of an extensive hog-pen and slaughter-house, and that in its course it also receives the drainage of a barn-yard and privy; that its waters so contaminated are collected on the meadow referred to, by means of an artificial dam, which is described and more fully set forth in the Complaint in this action.

Deponent further says that the direct effect of such flooding of marsh-meadow lands is to infiltrate its surface with decomposing animal and vegetable matter, which remains innoxious so long as the surface of the marsh-meadow is covered with water, but when the water is removed, and this infiltrated soil is exposed to the direct rays of the sun at an atmospheric temperature above sixty (60°) Fahrenheit, septic and malarial poison is necessarily developed. Along the banks of the Mississippi River there are Districts rendered so infectious, by similar overflows, that in early summer they are rendered uninhabitable.

Deponent further says that, in his opinion, the diseases of a septic and malarial type which have prevailed in this region are due to the flooding of these meadows.

ALFRED M. LOOMIS, M. D.,

42 W. 25th St., N. Y. City.

Sworn to before me this 7th }
day of February, 1879. }

JUDSON P. WILDS,

Notary Public, N. Y. County.

NEW YORK SUPREME COURT.

COUNTY OF WESTCHESTER.

FREDERICK J. STONE,

vs.

MOSES T. ODELL. *et al.*

}

County of Westchester, ss:

H. E. Smid, being duly sworn deposes and says:

That he resides in the Town of White Plains in the County of Westchester; that he is a physician and has practiced medicine for 21 years, and that he has given special study and attention to the cause, prevention and cure of malaria and malarial diseases.

Deponent further says that he is acquainted with the lands and dwelling of the plaintiff, and the dam and pond mentioned in the complaint herein, and the stream known as the Willsea Brook, from its source to the said pond, and the lands overflowed by means of said dam, and has personally examined the same.

That deponent finds as the result of this examination that the said Willsea Brook receives near its source the drainage of an extensive hog-pen and a slaughter-house, and that in its course it also receives the drainage of a barn yard, and privy and farm house; that its waters so contaminated flood the adjacent meadows by means of the said dam described in the complaint.

That the direct effect of such flooding of the lands so flooded is to infiltrate its surface with decomposed and decomposing animal and vegetable matter, so that when the water covering the surface of the same is removed or has evaporated therefrom, and this infiltrated soil is exposed to the direct rays of the sun at a temperature above fifty-eight (58°) degrees Fahrenheit, septic and malarial poison is necessarily developed.

That even should the causes of the contamination of the brook, feeding said pond, be removed, the peculiar nature of the bottom of said pond, described in the complaint herein, would still develop malarial poison. Deponent further says that in his opinion the diseases of a septic and malarial type which prevail in the region of this dam and pond, must be due to the effect of the flooding of the adjacent meadows as described in the complaint herein.

H. ERNEST SMID.

Sworn to before me this 8th }
day of February, 1879. }

E. B. LONG, Justice of the Peace.

NEW YORK SUPREME COURT,
COUNTY OF WESTCHESTER.

FREDERICK J. STONE,

vs.

MOSES T. ODELL, *et al.*

}

City and County of New York, ss:

Egbert L. Viele, being duly sworn says: that he resides in the City of New York; that he is a consulting engineer, and Honorary Sanitary Engineer of the New York Board of Health, and has, for more than twenty-five years, been professionally engaged, to a very large extent, in detecting the causes of malarial disease and providing measures for their removal; that he has resided in Westchester County, and has, for many years, been familiar with the several localities in that County, including "Dobbs Ferry" and "Irvington;" that he is acquainted with the premises referred to in the complaint and affidavits herein; that he has personally and critically examined these premises, including the stream called Willsea Brook, from its source to the lands that have been overflowed with the waters derived from it, by intercepting their flow in the meadow south-west of the premises of the Plaintiff in this action. Deponent finds, as the result of this examination, that this so-called Brook is, in fact, an open sewer, which receives and conveys an enormous amount of animal refuse. It receives the drainage from an extensive hog-pen, in which there is going on the wholesale fattening of hogs from refuse matter. The washings from these pens from piles of decomposing filth stacked up around them, and from enclosures where hogs are running and fed, are all received into this sewer. The washings from a slaughter-house, until recently in use, the drainage of a large swamp near its source, the washings from a road-way along its North-

erly bank, the drainage of a barn-yard and hog-pen borne down in its course, and that from a farm-house and privy on the Southerly bank, all combine to pollute and defile the limited amount of water which this stream contains. This accumulated defilement is intercepted in the meadows south-west of the premises of the plaintiff, and about three hundred yards distant therefrom; and by reason of the artificial dam or obstruction erected in the meadow, and which is described and more fully set forth in the Complaint in this action, a large mass of decomposition, both animal and vegetable, has been spread over and mingled with the vegetation of the meadow, to the extent of eight to ten acres; the water for the greater portion of this extent being barely sufficient to cover the grass. The result of all this is the generation of an enormous volume of health-destroying miasma, of a virulent type, sufficient for the propagation of malaria in neighboring localities that would otherwise be free from it.

Deponent is informed and believes that the Plaintiff and his family have been grievously afflicted with malarial diseases; that deponent avers that the malaria generated in the overflowed meadow-land referred to, in close proximity to plaintiff's house, is, in his opinion, the sole cause of the disease and affliction from which the plaintiff has suffered, and deponent further avers that no human ingenuity could devise a more effective hatching-ground for malaria, and that no degree of temperature known in this climate will destroy the germs of disease that have their habitat in this pestilential deposite, and that it is a matter of little consequence what season of the year these meadows are flooded or the waters drained off, so long as the soil is permitted to receive these elements, to which are due the malarial exhalations that arise therefrom.

EGBERT L. VIELE.

Sworn to before me this 31st }
day of January, 1879. }

RANDOLPH HURRY,

Notary Public, N. Y. Co.

The above affidavits, as will be seen, are given in a suit brought by our neighbor, Mr. F. J. Stone, to compel the removal and abatement of the dam and pond, and to enjoin the defendants (Moses T. Odell, the lessee, and Richard S. Palmer and John A. Palmer, the owners of the property on which the same are situated), from renewing or continuing the same.

On the 20th day of January, 1879, the plaintiff on the Summons and Complaint, duly verified, and, on the affidavits of distinguished physicians and experts, obtained a mandatory injunction, ORDERING "that the defendants, and each of them, be, and they hereby are, enjoined and commanded to remove the said dam, and pond of water, and all obstructions to the running of the water in said stream or streams, whose waters compose said pond, and that they and each of them, their agents, attorneys, servants, and all other persons, be, and they hereby are, enjoined and restrained from making, maintaining, continuing and renewing the said dam or pond, by means of a dam or otherwise."

The order further directed the defendants to show cause before one of the Justices of the Supreme Court, at a time and place therein mentioned, why this order be not continued during the pendency of this action. On the hearing of the motion, on the 15th of February, the Counsel for both parties being heard and approving the form of the order, the Court ordered that the injunction heretofore granted be continued during the pendency of this action. The Counsel for defendants stated to the Court that the defendants were obeying the injunction, and had already opened the dam, and were drawing off the waters of the pond as fast as could safely be done.

The Plaintiff has already noticed the cause for trial, and stated to the Court that he was ready and anxious to proceed to trial at the earliest possible day. The injunction will prevent the renewal or continuance of the nuisance until the final determination of this action; but it is too late to prevent the evil and mischief already done this winter, which, in the warmer weather of spring and summer, must produce, as heretofore, suffering and disease, if not death.

The above is the same as our previous one, but with the following additions: (1) The first part of the sentence is omitted, and the second part is repeated. (2) The word "also" is added at the end of the sentence. (3) The word "also" is added at the end of the sentence.

On the 1st of January, 1863, the General's Office of the U.S. Army, at Washington, D.C., issued a circular stamp, which was to be used in all correspondence with the War Department, and which read as follows: "GENERAL'S OFFICE, U.S. ARMY, WASHINGTON, D.C. LIBRARY".

